

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of BRIANNA NICOLE COLLINS  
MAPES, Minor.

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FAMILY INDEPENDENCE AGENCY

Petitioner-Appellee,

v

JONATHAN MAPES and TRACY MAPES,

Respondents-Appellants.

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UNPUBLISHED

March 5, 1999

Nos. 208914;209108

Bay Juvenile Court

LC No. 97-006012 NA

Before: Jansen, P.J., and Sawyer and Markman, JJ.

PER CURIAM.

Respondents appeal as of right the juvenile court's order terminating their parental rights to their minor child. The juvenile court terminated Jonathan Mapes' parental rights pursuant to MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g) and terminated Tracy Mapes' parental rights pursuant to MCL 712A.19b(3)(i); MSA 27.3178(598.19b)(3)(i). We affirm in both cases.

With respect to respondent Jonathan Mapes, he admitted a history of criminal activity and assaultive behaviors, as well as drug and alcohol abuse, and that, at the time of the adjudication, he was imprisoned for a parole violation. He also admitted that a court had earlier terminated his parental rights to his son, Austin and that he had had no involvement in Brianna's life.

Jonathan argues that the probate court's order terminating appellant's parental rights should be reversed and vacated because the court made no effort to reunify the family and because the evidence was not sufficient clear and convincing to warrant termination. We review the probate court's factual findings for clear error. *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996). A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that the probate court made a mistake. MCR 5.974(I); *Conley, supra*. MCR 5.974(D) provides:

The court shall order termination of the parental rights of a respondent at the initial dispositional hearing held pursuant to MCR 5.973(A), and shall order that additional efforts for reunification of the child with the respondent shall not be made, if

- (1) the original, or amended, petition contains a request for termination;
- (2) the trier of fact found by a preponderance of the evidence that the child comes under the jurisdiction of the court on the basis of MCL 712A.2(b); MSA 27.3178(598.2)(b);
- (3) the court finds on the basis of clear and convincing legally admissible evidence introduced at the trial, or at plea proceedings, on the issue of assumption of the court jurisdiction, that one or more facts alleged in the petition:
  - (a) are true,
  - (b) justify terminating parental rights at the initial dispositional hearing, and
  - (c) fall under MCL 712A.19b(3); MSA 27.3178(598.3);

unless the court finds, in accordance with the rules of evidence as provided in subrule (F)(2), that termination of parental rights is clearly not in the best interest of the child.

Jonathan first argues that reversal of the order terminating his parental rights is required because petitioner did not provide sufficient services to him. However, to terminate parental rights at the initial disposition stage, petitioner must only establish the factors set forth above. There is no requirement that petitioner provide a parent with services toward reunification. Thus, Jonathan's argument must fail.

Jonathan next argues that petitioner did not provide clear and convincing evidence to support termination. The juvenile court terminated his parental rights upon finding clear and convincing evidence to establish MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g) [failure to provide proper care and custody]. Considering the evidence adduced at both the plea proceeding and dispositional hearing, this finding is supported by clear and convincing evidence. Most telling is Jonathan's clear expression that he does not intend to gain custody of Brianna, but wants only to be "involved" in her life. He intends to move to Arizona to live, work and recover from his substance abuse and criminal problems. He testified that he would be willing to pay child support, but indicated only that he would visit Brianna when he could. Clearly, Jonathan is unwilling to provide Brianna with proper care and custody. The court's finding on this factor is not clearly erroneous.

Further, because Jonathan failed to present evidence that termination of his parental rights is clearly not in Brianna's best interests, the juvenile court did not err in terminating his parental rights. After the probate court concludes that clear and convincing evidence supports at least one of the statutory grounds for termination, the respondent has the burden of proving that termination of parental rights is clearly not in the best interests of the child. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, *supra* 222 Mich App 472-73. Jonathan argues that because he wishes to establish a relationship with Brianna, termination of his parental rights is clearly not in her best interests. Jonathan has been an absent father. He has been imprisoned since before Brianna's birth and has no intent to establish a full-time relationship with her. He wants visitation with Brianna only when he is able to do so. The evidence he has provided falls short of demonstrating that termination is clearly not in Brianna's best interests. In the absence of such evidence, the juvenile court's decision to terminate Jonathan's parental rights is not clearly erroneous.<sup>1</sup>

With respect to respondent Tracy Mapes, she admitted that she spent time in jail as a result of her leaving her son Austin, then ten months old, alone in her car for about one hour while she shopped in a mall and that a court had terminated her parental rights to Austin. Tracy was convicted of fourth-degree child abuse for this incident and spent seventy-five days in jail and six months on a tether. Tracy also admitted to having used crack cocaine during her pregnancy with Brianna, and having a history of both drug and alcohol abuse.

Tracy also argues that the juvenile court's decision to terminate her parental rights is not based on clear and convincing evidence. This argument too must fail. The juvenile court terminated Tracy's parental rights upon a finding under MCL 712A.19b(3)(i); MSA 27.3178(598.19b)(3)(i): "Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful." The court based its conclusion on evidence regarding Tracy's repeated untruthfulness and manipulation. The court found that, as when her rights to Austin had been terminated, Tracy continually lied to her own benefit and that her untruthfulness and manipulation prevented successful therapy.

The court also noted that Tracy has been in therapy for over four years, yet she had failed to demonstrate an ability to identify and focus on her parental and other problems. The court further found that it could not trust that Tracy had made any significant recovery, with the exception of her abstinence from cocaine. The court noted that Tracy had presented no credible evidence that her previous patterns of behavior had been altered.

The findings of the court, in our judgment, are supported by the evidence, and this Court should defer to the juvenile court's determinations regarding the weight of the evidence and the witnesses' credibility. *In re Miller*, 433 Mich 331, 344; 445 NW2d 161 (1989). The court's finding that Tracy has failed to successfully change since the time that her rights to Austin were terminated is adequately supported by the evidence and its decision to terminate Tracy's parental rights is not clearly erroneous.

Affirmed.

/s/ Kathleen Jansen

/s/ David H. Sawyer

/s/ Stephen J. Markman

<sup>1</sup> We note that the juvenile court appeared to consider evidence other than that introduced at the adjudication, i.e., respondents' plea proceedings, in determining whether to terminate respondents' parental rights. MCR 5.974(D)(3) indicates that, when termination is sought at the initial disposition, the court must find on the basis of "legally admissible evidence introduced at the trial, or at plea proceedings, on the issue of assumption of court jurisdiction" that termination is justified under § 19b(3). Thus, it would appear that the juvenile court erred when, in this case, it terminated respondents' parental rights on the basis of evidence adduced at the dispositional hearing that was not also adduced at the respondents' plea proceedings and where, in Jonathan's case, Jonathon's plea did not establish grounds for termination by clear and convincing evidence. Nonetheless, respondents do not raise this issue on appeal and, therefore, it will not be considered further.